



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

**RIN 0648-XF080**

**Endangered and Threatened Species; Petition for Rulemaking to Establish a Whale Protection Zone for Southern Resident Killer Whales**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of petition; request for comments.

**SUMMARY:** This document announces receipt by the National Marine Fisheries Service (NMFS) of a petition for rulemaking to establish a whale protection zone in the San Juan Islands, Washington, to support recovery of endangered Southern Resident killer whales. NMFS is requesting comments on the petition and will consider all comments and available information when determining whether to accept the petition and proceed with the suggested rulemaking.

**DATES:** The closing date for comments on the petition is *[insert date 90 days after the date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit information on this document identified by NOAA-NMFS-2016-0152 and the petition by either of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the Federal e-

Rulemaking Portal, go to [www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0152](http://www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0152), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail or hand-delivery: Lynne Barre, NMFS West Coast Region, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Lynne Barre, West Coast Regional Office, 206-526-4745.

**SUPPLEMENTARY INFORMATION:** In 2009, NMFS proposed vessel traffic regulations to minimize vessel impacts to Southern Resident killer whales, including a 200-yard approach rule, a prohibition on parking vessels in the path of the whales, and a protected area (no-go zone) in Puget Sound along the west side of San Juan Island, Washington (74 FR 37674; July 29, 2009). In 2011, we finalized vessel traffic regulations that included an approach rule and path prohibitions but did not finalize a protected area (76 FR 20870; April 14, 2011). In deciding not to move forward with a protected area in the final rule, we noted the degree of public opposition

to the concept and concluded a no-go zone required further analysis. We further noted that to be effective, regulations must be understood by the public and have a degree of public acceptance. We stated that we would evaluate the enacted regulations, gather additional information and conduct further analysis and public outreach on the concept of identifying a protected area or no-go zone as a future protective measure. Since 2011, we have conducted a public workshop in 2013, continued communicating with a variety of interested groups (including the petitioners) on this topic, and are currently completing a review of the 2011 vessel traffic regulations. NOAA's Northwest Fisheries Science Center has also conducted further research on the impacts of vessels on Southern Resident killer whales.

On November 10, 2016, NMFS received a petition pursuant to the Administrative Procedure Act (APA) from the Orca Relief Citizen's Alliance, Center for Biological Diversity, and Project Seawolf requesting that we utilize our authorities under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) to establish a whale protection zone to reduce noise and disturbance of Southern Resident killer whales. The petitioners identify threats to the whales, discuss alleged insufficiencies with existing protections, and describe NMFS' authority under the ESA and MMPA to establish a whale protection zone with regulations. The petition describes the features of a whale protection zone and cites information from our evaluation of the benefits of a protected area supporting our 2009 proposed rule. The area proposed for a protection zone is similar to, but wider and longer than the zone originally considered by NMFS in 2009 (74 FR 37674; July 29, 2009).

To ensure our decision about whether to accept the petition and move forward with the

petitioned action to establish a whale protection zone is based on the best available scientific and commercial information, we are soliciting information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the petitioned action. In particular we request information and comments on: (1) The advisability of and need for regulations to establish a whale protection zone; (2) the geographic scope of regulations; (3) alternative management options for regulating vessel interactions with killer whales, including but not limited to the option in the petition; (4) scientific and commercial information regarding the effects of vessels on killer whales and their habitat; (5) information regarding potential economic effects of regulating vessel interactions; and (6) any additional relevant information that NMFS should consider should it accept the petition. To inform your comments, information on the previous vessel regulations, the petition and other supporting documents is available at:

*[http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/killer\\_whale/vessel\\_regulations.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/vessel_regulations.html)*

You may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

If NMFS decides to accept the petition and initiate rulemaking, we will notify the petitioners and publish a notice of our decision in the **Federal Register**. If NMFS decides not to

proceed with the petitioned action, we will notify the petitioners, provide a brief statement of the grounds for the decision, and publish notice of our decision in the **Federal Register**.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: January 6, 2017.

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